HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

Writ Petition No. 660 of 2006 (M/S)

Vishal Mani Sati & others.
Vs
State and others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 10.08.2006.

Initial of Judge

Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 660 (MS) OF 2006

1. Vishal Mani Sati, aged about 30 years, S/o Sri Badri Dutt Sati, R/o C/o Jagdish Singh Bisht, Ashok Nagar, Dandehra, Roorkee.
2. Vijay Kumar Singh, aged about 26 years, S/o Sri Laxman Singh R/o Jagdev Nagar, District Bhojpura Bihar.
3. Geeta Rana, aged about 32 years, W/o S.S. Rana, R/o New Mohnapura, Delhi Road, Roorkee, Haridwar.
4. Kumari Preeti, aged about 25 years, D/o Sri Mohakam Singh, R/o Society Road, Laksar, Laksar, Haridwar.
5. Thakur Chand, aged about 32 years, S/o Gopal Ram, R/o Village Tehpani, Pithoragarh. .....Petitioners.

Vs.

1. State of Uttaranchal, through Secretary, Ministry of Higher Education, Dehradun.
2. Hemwati Nandan Bahuguna Garhwal University, Srinagar, Uttaranchal, through its Vice Chancellor.
3. Vice Chancellor, Hemwati Nandan Bahuguna Garhwal University, Srinagar, Uttaranchal.
4. Registrar, Hemwati Nandan Bahuguna Garhwal University, Srinagar, Uttaranchal.
5. Deputy Director, Higher Education, Camp Office, Dehradun.
6. Institute of Progressive Studies and Development, Double Phatak Road (Main N.H. 58), Roorkee, Haridwar, Uttaranchal, through its Director Dr. R. A. Mittal.

7. National Council for Teacher Education, Northern Regional Committee, A-46, Shanti Path, Tilak Nagar, Jaipur, through its Regional Director. .....Respondents.

Dated: 10.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Alok Singh, Sr. Advocate, assisted by Sri Naresh Pant and Ms. Menka Tripathi, Advocate for the petitioners, Sri L.P. Naithani, Sr. Advocate, assisted by Sri J.P. Joshi, Advocate for the respondents no. 2, 3 and 4, Sri N.B. Tiwari, Additional Advocate General, Advocate for the respondents no. 1 and 5.

By the present writ petition, the petitioners have prayed for a writ of certiorari quashing the order dated 25/26.05.2006 (Annexure No. 1 to the writ petition). Further prayer has been made for a writ of mandamus commanding the respondents to allow the petitioners to participate in the annual examination of academic session 2005-2006 which are going to be held by the University from 08.05.2006 or in the alternative further prayer has been made for a writ of mandamus commanding the respondents to hold the annual examination of the petitioners in the month of June, 2006 after completing all the formalities including issuance of admit card.

Briefly stated, according to the case of the petitioners, they are graduate from the recognized University and are qualified to get admission in the B.Ed. course after passing the Entrance Examination.

The Institute of Progressive Studies and Development Roorkee, Haridwar, Uttaranchal, hereinafter referred to as the Institute was established by the Manav Vikas Charitable Manch, a registered society, in the year, 2004 and presently

the same is being managed by the said Manav Vikas Charitable Manch.

The aforesaid institute applied for recognition with the National Council for Teacher Education after submitting an application to the Northern Regional Committee for grant of recognition for B.Ed courses of one year duration under Section 14 (1) of the National Council for Teacher Education Act, 1993.

The Institute was recognized by the Regional Committee in exercise of powers under Section 14 (3) (a) of the NCTE Act, 1993 for 100 seats in B.Ed. course of one year duration w.e.f. the academic session 2004-2005 subject to certain terms and conditions. The conditions are quoted below:-

"a. Appointment of the faculty members duly qualified and staff as per the norms of NCTE/State Govt./UGC is to be completed before the commencement of the session.

b. The countersigned statement of all faculty members from the Registrar of the concerned University should be submitted before the commencement of the academic session 2004-2005.

c. The institution shall adhere to all the other regulations and guidelines as framed by NCTE from time to time.

d. The institution shall within one month of the receipt of Recognition order, convert the Endowment Fund account into a Joint Account in the form of FDR for a period of not less than 60 months (Five years) in the Nationalized Bank only to be operated along with an official of the Regional Committee.

e. That the Reserve Fund for an amount equal to three months salary of the Teachers & Staff be created

within one month from thue date of issue of this order and maintained in the form of FDR in favour of the management/institution, for a period of not less than sixty months (Five years) in a Nationalized Bank.

f. Non-compliance of the above mentioned conditions shall cause action under Section 17 (1) of NCTE Act, 1993.

On 12.08.2004, the Institute was granted temporary affiliation for a period of one year starting from 01.07.2004 to 30.06.2005 under Section 37 (2) of U.P. State Universities Act, 1973.

On 02.08.2004, a government order was issued in respect of the management quota in the B.Ed. courses under Self Financing Scheme in which the guidelines were issued stating that the Management Quota would be 50% of the total seats for the session 2004-2005 and that the same would be filled from amongst the merit list prepared in the Combined Entrance Examination conducted collectively by the University.

On 29.09.2004, another government order was issued in respect of the management quota in the B.Ed. courses being run under the self financing scheme in which it was provided that the management quota would be 50% of the total admission capacity and the candidates will be selected from the merit list of the combined entrance examination of likewise institutions or that conducted by the University. It was also provided that there will not be a separate examination for 50% management quota, the admission shall be given from amongst the merit list prepared in the entrance examination held by the University. However, the counseling will be done by the Institute and an advertisement shall also be published by the Institute that those candidates who have appeared in

the examination held by the University and have got marks more than the required cut-off marks and are desirous of taking admission in the Institute may submit their applications and a register for the said purpose shall also be prepared by the Institute and at the time of counselling the representative of the State Government would also remain present and then the entire entrance proceeding shall also be approved by the University.

Pursuant to directions of the State Government, the Institute was informed vide letter dated 21.09.2004 that a meeting in respect of the admission in the B.Ed. courses is to be held to take a policy decision and thus the Director of the Institute was called to participate in the same.

On 22.09.2004, the aforementioned meeting was held and a policy decision was taken, where it was decided that the transparency shall be maintained while selecting candidates of 50% management seats and it was also assured that all the rules and regulations of NCTE and orders and directions issued by the Supreme Court and State Government would be followed, which were relevant on the date of admission process.

On 15.10.2004, counseling for 50% management seats for admission in the B.Ed. course for the session 2004-2005 was held in the presence of Government representatives and the same was finalized on the basis of merit and keeping in mind that adequate number of application, in reserved category have not been received.

On 04.12.2004, the Registrar, Hemwati, Nandan Bahuguna Garhwal University wrote a letter to the respondent no. 5 in respect of the counseling held for the 50% management seats suggesting that the Institute may publish the selected list and invite complaints from the public and then

finalize the list and further stating that the Institute may be permitted to commence admission only after fulfilling all the conditions laid down in affiliation order dated 12.08.2004.

On 10/11.02.2005, a letter was written by the Registrar HNBGU to the respondent no. 6 directing that the admission be given to the candidates, whose names figure in the two select list and while giving admissions the following conditions be complied with i.e. the B.Ed. course be conducted as per the NCTE norms and the affiliation order dated 12.08.2004 and the fees be taken from the students as per the fee structure fixed by the University. It was also provided that only those students would be given admission, who possess the requisite qualification i.e. general candidates and OBCs should possess the graduate degree with 45% marks whereas the schedule caste and schedule tribe students be a graduate.

On 21.04.2005 the Registrar Hemwati Nandan Bahuguna University wrote a letter to the respondent no. 6 indicating the fee structure to be charged from the students of B.Ed. course under the self financing scheme.

On 04.05.2005, the respondent no. 6 wrote a letter to the Registrar, Hemwati Nandan Bahuguna University giving the details of the fees received under the self financing course and the deposition of the same with the Finance Controller, Hemwati Nandan Bahuguna University.

On 14.07.2005, the Chancellor informed the Vice-Chancellor, Hemwati Nandan Bahuguna University that the respondent no. 6 had been granted temporary affiliation for the period 01.07.2005 to 30.06.2006 in the exercise of power under Section 37 of the U.P. State Universities Act, 1973.

Thereafter, as per the directives of the State Government advertisements were issued by the respondent no. 6 inviting applications for 50% seats of management quota from

amongst the candidates whose name figured in the merit list for the common B.Ed. entrance examination 2005 conducted by the Hemwati Nandan Bahuguna University in the Hindi Newspaper “Amar Ujala” & “Dainik Jagran” on 16.08.2005.

Pursuant to the aforesaid advertisement, total number of 683 forms were issued and 123 forms were received and a total number of 31 male candidates participated in the counseling, whereas total number of 45 female candidates participated in the counseling held in pursuance of the aforesaid advertisement. It is pertinent to mention here that the petitioners had also applied in pursuance to the advertisement dated 16.08.2005 for admission in the B.Ed. courses for the academic session 2005-2006.

Suddenly a press notice was published in the Hindi newspaper daily “Amar Ujala” by the Registrar Hemwati Nandan Bahuguna University stating therein that in the session 2005-2006 in the self financing B.Ed. courses, the institute had no right to give admission in the management quota.

Petitioners have submitted that due to publication of the press notice, they were under a bonafide impression that the B.Ed. course being conducted by the respondent no. 6 was after due approval of the Hemwati Nandan Bahuguna University and a press release item to this effect was also published in the Hindi Newspaper.

As the applications in pursuance to the advertisement had been received in the Institute, as such the respondent no. 6 submitted a letter dated 27.09.2005 addressing the Hon’ble Chief Minister as well as the Secretary Higher Education and the Registrar, Hemwati Nandan Bahuguna University requesting that nominee of the State Government be sent for

counseling so that the admission process be completed at the earliest.

Vide notification dated 24.09.2005, the result of the successful candidates for the year, 2005 was published by the Controller of Exams in the Hindi Newspaper.

On 30.09.2005, a G.O. was issued providing that the counseling for 50% management seats in the respondent no. 6 would be held in which the respondent no. 5 was appointed as the nominee and in addition to the earlier conditions further conditions were also imposed which included that the respondent no. 6 was required to give admissions keeping in mind the cut-off marks fixed by the University and the counselling would be held in the presence of the Nominee and advertisement be published regarding the same. It was further provided that the Institute shall put the names of the candidates who had applied in a register and all the candidates would be apprised of the fee structure in the presence of the appointed nominee and immedidately on the next date of conclusion of the selection process the appointed nominee would send the details of the State Government such as the names of the candidates.

On 01.10.2005, the respondent no. 6 got the information published in the Hindi Newspaper “Dainik Jagran” and “Amar Ujala” stating that the counseling of those candidates who had submitted their applications for the B.Ed. course for the year, 2005-2006 against the management quota seats would be held on 03.10.2005 between 9 am and 4 pm.

On 03.10.2005, the respondent no. 5 wrote a letter to the respondent no. 6 informing that the date fixed for counseling was not suitable to him hence, the date for counseling be fixed for 14.10.2005.

On 03.10.2005, the respondent no. 6 informed the petitioners and the other candidates vide notice that the counseling for the management seats cannot be held on 03.10.2005 and that the same would be held on 14.10.2005 between 10 am and 4.30 pm.

On 05.10.2005, the respondent no. 6 wrote a letter to the respondent no. 1 asking him to clarify and to remove the condition 5 (b) given in the Government order dated 30.09.2005 and it was practically feasible.

On 10.10.2005, the respondent no. 1 issued a G.O. to the Registrar, Hemwati Nandan Bahuguna University clarifying the condition 5(b) given in the G.O. dated 30.0-9.2005 stating therein that combined merit be taken into consideration as the merit of the all the candidates who had appeared in the combined entrance conducted by the University cannot be fixed hence, the minimum cut-off merit has to be taken into consideration while holding the counseling of the management quota seats.

On 14.10.2005, the respondent no. 6 informed the respondent no. 5 that none of the schedule tribe candidate had applied for admission, hence the said seats should be permitted to be filled up by general candidates.

On 18.10.2005, the respondent no. 6 informed the Registrar, Hemwati Nandan Bahuguna University that in pursuance of the G.O. dated 30.09.2005, the appointed officer for the purpose of counseling had prepared the list of the 50 candidate on 14.10.2005 and in accordance with the same admission had been also given and the same was being forwarded for information and necessary action.

The petitioner after being successful in the counseling were declared selected for admission in the B.Ed. course for the academic session 2005-2006 by the respondent no. 6 and

the educational classes of the petitioners were also commenced with immediate effect.

Counsel for the petitioners has submitted that they have duly deposited their fees as per the fee structure prescribed and have been attending the educational classes regularly.

On 19.10.2005, the Registrar, Hemwati Nandan Bahuguna University wrote a letter to the Respondent no. 6 wherein it was stated that he has come to know through the newspapers and sources that counseling was held for the management quota for your institution whereas there was a press note issued by the University on 06.09.2005 that for the State and management quota counseling will be held as per the G.O. and on the basis of the merit list.

In reply to the letter dasted 19.10.2005, the Respondent no. 6 submited its reply on 26.10.2005 stating that the G.O dated 30.09.2005 and 10.10.2005 were addressed to the Registrar, Hemwati Nandan Bahuguna University in which specific information was provided regarding the appointment of the nominee for the purpose of couselling and the counseling was held on 14.10.2005 in the presence of the nominee for the 50 management quota seats and was finalized on the basis of minimum cut-off merit and the list of selected candidates have been sent to the Registrar, Hemwati Nandan Bahuguna University for necessary action and hence, all the proceedings have been held as per the directions & G.O.s issued form time to time establishing that no irregularity had been committed.

On 23.11.2005, the Manav Vikas Charitable Manch, the society which runs the Institute sent a letter to the respondent no. 1 informing that the seats of the management quota for B.Ed. course for the session 205-2006 had been held in accordance with the G.Os and guidelines issued in this regard

form time to time and on 14.10.2005 and the list had also been forwarded to the University but the University has failed to grant approval, hence a request was made that the list submitted by the respondent no. 6 of the management quota seats be approved by the University.

An admission committee was constituted to look into the matter of granting approval to the list of management quota submitted by the respondent no. 6 and the said committee under special circumstances keeping the welfare of the students into mind granted approval to the management quota list and directed that the vacant seats would only be filled up after adopting the due process and as per the directions of the University.

On 21.12.2005, once again the respondent no. 6 submitted a letter to the respondent no. 1 requesting for grant of approval to the list of management quota so submitted and informing that the teaching of the B.Ed. courses had also commenced from 19.10.2005.

On 24.01.2006, the respondent no. 1 issued an office memo, a copy of which was also endorsed to the respondent no. 6 in which it was mentioned that on 16.01.2006 matter of management quota seats in B.Ed courses run by self finance institution was considered and it was decided that the education should be imparted at the earliest and entrance for the management quota seats would be done by counseling/allotment by the University and with the said proposal maximum institutes were satisfied hence, the approval to the same be submitted in the office by 5 pm on 27.01.2006.

In reply to the aforesaid office memo of the respondent no. 6 submitted a detailed reply on 27.01.2006 indicating therein that the exercise of holding counseling of the

management seats had already been undertaken and the students have already been admitted on 19.10.2005 taking into account the minimum cut-off merit as per the law laid down by the Hon'ble Supreme Court. The respondent no. 6 had to start the course as there was a delay in filling up of the State quota seats. Hence, it was informed to all the candidates that if they were getting admission against the state quota they are permitted to join the same. It was also requested that approval be given to the list of the admitted candidates and list of candidates who have been given admission against the subsequent vacancies.

On 18.03.2006, the respondent no. 6 informed the Registrar, Hemwati Nandan Bahuguna University that as only four candidates had submitted their applications against the vacant management quota seats then as per the cut-off marks fixed by the University it was verbally directed by the Registrar, Hemwati Nandan Bahuguna University to give admission to those four candidates as no written orders were required in the said regard. As per the directions, the said candidates were given admission and their fees has also been deposited and as such a request was made to the Registrar, Hemwati Nandan Bahuguna University to give approval to the names of the four candidates.

On 04.04.2006, the respondent no. 6 wrote another letter to the Registrar, Hemwati Nandan Bahuguna University for holding the annual examination for the session 2005-2006 as the admission formality had been completed on 18.10.2005 and ever since the course was going on and that mostly the vacancies of State Quota were also filled up by 08.02.2006 and the classes had commenced from 14.02.2006 which were being conducted in two shifts and since the institute had

fulfilled the terms and conditions of the NCTE for running B.Ed. course for the session 2005-2006.

On 21.04.2006, the President of the respondent no. 6 requested the Vice Chancellor for holding of the examinations of the B.Ed. session 2005-2006 stating therein that as per the NCTE norms 150 days' education has been imparted, hence the examination of the students should be held along with the annual examination of the State Government/Aided institution.

On 22.04.2006, the Registrar Hemwati Nandan Bahuguna University wrote a letter to the respondent no. 6 regarding the illegal admissions being given to students in the management quota in B.Ed. courses and seeking an explanation within one week as to why twenty two students had been given admissions below the minimum cut-off merit fixed by the University.

Petitioner has submitted that in the said letter itself the Registrar, Hemwati Nandan Bahuguna University has accepted that the State Government on the basis of the admission committee's report had given approval to the admission of all the candidates including the said 22 candidates and the University was not having any grievance against the same yet explanation for exercise already concluded was sought from the respondent no. 6.

In reply to the letter dated 22.04.2006, the respondent no. 6 submitted its reply/explanation on 26.04.2006 in which once again it was stated that the admission process was carried as per the directions issued by the State Government and for determining the merit the law laid down by the Supreme Court was also kept in consideration and then only a select list of 50 students was issued and the same was duly approved by the

admission committee as the University was time and again raising objections regarding approval to the same.

The respondents no. 1 to 5 failed to take into consideration the reply submitted by the respondent no. 6 and vide order dated 25/26.05.2006 refused to hold the examinations for the year, 2005-2006 in respect of the B.Ed. students.

According to the petitioners, they through their Kshetra Adyapak Shiksha Samiti, IPSD, have been regularly representing the Director of the respondent no. 6 to conduct the examinations for the session 2005-2006 as well as to conduct the examination of the 4 students who were inducted into the management quota.

In this regard the petitioners have also moved representations before the respondent no. 6 and in all the representations, they have requested that their examination be held and all formalities in that regard be competed so that their academic session would not be wasted.

However, the respondents no. 6 has informed the petitioners that their examination cannot be held from 08.06.2006 as the respondent no. 4 has passed the order refusing to hold the examination and thus, he has become unable to do anything.

The grievance of the petitioners is that it has not been taken into consideration that the B.Ed course had been commenced from 19.10.2005, when the management quota seats were filled up and the delay was on the part of the University, which caused in filling up the seats of the Government Quota, but the petitioners are being held responsible for the same.

Petitioners have submitted that in the previous academic session also i.e. 2004-2005, the same delay had occurred as

the seats of the State Government quota could only be filled up in February, 2005 and then also the examinations of that academic session started in June, 2005.

In **T.M.A. Pai Foundation Vs. Sate of Karnataka (2002) 8 SCC *Page* 481,** the eleven judge bench has observed as under:-

"68. It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forego or discard the principle of merit. It would, therefore, be permissible for the university or the Government, at the time of granting recognition, to require a private unaided institution to provide for merit-based selection while, at the same time, giving the management sufficient discretion in admitting students. This can be done through various methods.

FORMATION OF COMMITTEE

In the case of Islamic Academy Education (supra) the criteria which has been adopted is the University/State to provide merit based selection at the time of granting admission or evaluation and the respective State Governments have been directed to appoint the permanent committee, who will ensure that the test conducted by the Association of the Colleges is fair and transparent. For each State a separate commit shall be formed headed by a retired Judges of the High Court to be nominated by the Chief Justice of that State. The role of committee will be for supervising that the test is conducted in a fair and transparent manner. The observations of the apex Court to that effect are quoted below:-

"18. Lastly, it must be mentioned that it was urged by the learned counsel for the appellant that paragraph 68 of the majority judgment only permits the University/State to provide for merit-based selection at the time of granting recognition/affiliation. It was also submitted that once

recognition/affiliation is granted to unaided professional colleges, such a stipulation cannot be provided subsequently. We are unable to accept this submission. Such a provision can be made at the time of granting recognition/affiliation as well as subsequently after the grant of such recognition/affiliation.

19. We now direct that the respective State Governments do appoint a permanent Committee which will ensure that the tests conducted by the association of colleges is fair and transparent. For each State a separate Committee shall be formed. The Committee would be headed by a retired Judge of the High Court. The Judge is to be nominated by the Chief Justice of that State. The other member, to be nominated by the Judge, would be a doctor or an engineer of eminence (depending on whether the institution is medical or engineering/technical). The Secretary of the State in charge of Medical or Technical Education, as the case may be, shall also be a member and act as the Secretary of the Committee. The Committee will be free to nominate/co-opt an independent person of repute in the field of education as well as one of the Vice-Chancellors of the University in that State so that the total number of persons on the Committee do not exceed five. The Committee shall have powers to oversee the tests to be conducted by the association. This would include the power to call for the proposed question paper(s), to know the names of the paper-setters and examiners and to check the method adopted to ensure papers are not leaked. The Committee shall supervise and ensure that the test is conducted in a fair and transparent manner. The Committee shall have the power to permit an institution, which has been established and which has been permitted to adopt its own admission procedure for

the last, at least, 25 years, to adopt iots own admission procedure and if the Committee feels that the needs of such an institute are genuine, to admit, students of their community, in excess of the quota allotted to them by the State Government. Before exempting any institute or varying in percentage of quota fixed by the State, the State Government must be heard before the Committee. It is clarified that different percentage of quota for students to be admitted by the management in each minority or non-minority unaided professional colleges(s) shall be separately fixed on the basis of their need by the respective State Governments and in case of any dispute as regards fixation of percentage of quota, it will be open to the management to approach the Committee. It is also clarified that no institute, which has not been established and which has not followed its own admission procedure for the last, at least, 25 years, shall be permitted to apply for or be granted exemption from admitting students in the manner set out herinabove.

195. However, there may not be any permanent Committee functioning as a tribunal. Such a body, if any, must be created under a statute. A Tribunal with an adjudicatory power should not be directed to be created by this Court in exercise of its power under article 142 of the Constitution of India. This direction is only interim in nature and is being issued in the interest of all concerned. It is, therefore, clarified that the body created in terms of this judgment would function only so long a statutory body, if any, does not come into being by reason of a statute or statutory rules. The legislature or the rule-making authority may, however, lay down the procedure for proper functioning thereof."

After going through the record, it appears that the fault was on the part of the university and not on the part of the respondents.

Further more in view of the judgment of T.M.A. Pai and Islamic Education Academy, there cannot be any quarrel that merit alone is the criteria therefore, if the selection has been based on the basis of common entrance test. The institution is recognized by the HNB Garhwal University as well as by the State Government. Students are proceeding with their academic course and there is nothing to show that procedure adopted by the institution is any way against the rules framed by the Government or the syllabus prescribed by the University. There appears to be no impediment in proceeding with B.Ed. degree in the institution, as they have been selected from a single window by a Common Entrance Test. If the respondents try to pose hurdles on the ground of some hypertechnical approach, it would not be in the interest of the students. The students may not be allowed to suffer any more and as such order dated 25/26.05.2006 deserves to be set aside.

In view of above, writ petition is allowed with the following relief:-

(a) A writ of certiorari is issued quashing the order-dated 25/26.05.2006 passed by the Registrar, H.N.B./ Garhwal University, Srinagar.

(b) A writ of mandamus is issued directing the respondents to permit the petitioner to appear in the examination of current session.

(c) A writ of mandamus is issued directing the respondents to approach the Committee constituted by Hon'ble the Chief Justice of Uttaranchal in pursuance of the directions of the

Apex Court in the case of Islamic Academy of Education and another Vs. State of Karnataka and others reported in (2003) 6 SCC 697 regarding 50% of management quota.

Accordingly, writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

10.08.2006
Rathour